Supreme Court, U.S.
FILED
JUN 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2087

IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1985

MILTON M. LAWRENCE and
HELEN F. LAWRENCE,

Petitioners,

vs.

ADVANCED PATENT
TECHNOLOGY, Inc., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

STEINER & GERSTEIN
ROBERT S. GERSTEIN, PH.D.
Suite 700
2566 Overland Avenue
Los Angeles, California 90064
(213) 559-8150
Counsel for Petitioners

Lawyers Brief Service / Legal Publishers / (213) 383-4457

18 PP

TOPICAL INDEX

JUDGMENT
Civil LV 82-387 RDF
Dated: September 5, 1984

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
Civil LV 82-387 RDF
Dated: September 5, 1984

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
s/s Jackie Lowlett
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MILTON LAWRENCE and HELEN LAWRENCE,

Plaintiffs,

vs.

ADVANCE PATENT TECHNOLOGY, INC. a Nevada corporation; DIVERSIFIED GAMING AND TECHNOLOGY, INC., a Nevada corporation; A.P.T. FINANCIAL CORPORATION, a Nevada corporation; INTERNATIONAL TECHNICAL DEVELOPMENT CORPORATION; JACK SOLOMON, and NORMAN VANCE,

Defendants.

Civil LV 82-387 RDF

JUDGMENT

This action having come on regularly for trial before the Honorable Roger D. Foley, sitting without a jury, and all parties having been represented by counsel, and all matters having been duly considered,

IT IS HEREBY ORDERED AND ADJUDGED that judgment be entered for the defendants and against the plaintiffs, and that defendants shall recover their costs.

DATED: September 5, 1984.

s/s Roger D. Foley
DISTRICT JUDGE

ENTERED
SEP 6 1984
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY s/s Jackie Lowlett

SEP 6 4:10 PM '84
BY s/s Jackie Lowlett
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MILTON LAWRENCE and HELEN LAWRENCE,

Plaintiffs,

vs.

ADVANCE PATENT TECHNOLOGY, INC., a Nevada corporation, DIVERSIFIED GAMING AND TECHNOLOGY, INC., a Nevada corporation; A.P.T. FINANCIAL CORPORATION, a Nevada corporation, INTERNATIONAL TECHNICAL DEVELOPMENT CORPORATION; JACK SOLOMON, and NORMAN VANCE,

Defendants.

Civil LV 82-387 RDF

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on regularly for court trial on September 4, 1984, in the above-entitled court before the Honorable Roger D. Foley. All of the parties hereto, except Diversified Gaming and Technology, Inc., and Internation-

al Technical Development Corporation, appeared by and through their respective attorneys of record. The court received and considered the testimonial and documentary evidence presented and heard and considered the arguments of counsel. Good cause appearing therefor, the court hereby finds as follows.

FINDINGS OF FACT

1. Plaintiffs Milton and Helen Lawrence are and, at all times material hereto, have been residents of the State of California.

2. Defendant Gaming and Technology, Inc., (previously known as Advanced Patent Technology, Inc. and hereinafter referred to as "GTI") is a Nevada corporation with its principal place of business in this district.

3. Defendant A.P.T. Financial Corporation is a Nevada corporation which did not exist until 1981.

4. Defendants Jack Solomon and Norman Vance are and, at all times material hereto, have been residents of the State of Nevada.

5. The amount in controversy exceeds the sum of $10,000.

6. Defendants Diversified Gaming and Technology, Inc., and International Technical Development Corporation were not served with process and were dismissed on stipulation of counsel. Norman Vance was dismissed on stipulation of counsel.

7. Commencing in 1968, plaintiffs began buying common stock of GTI. Between 1968 and 1980, inclusive, plaintiffs bought and sold thousands of shares of the unregistered common stock of GTI.

8. Plaintiff Milton Lawrence is a lawyer and, during the first half of the 1970's, became an expert in connection with the law relating to purchases and sales of unregistered common stock.

9. At all times material hereto, plaintiffs understood the risk involved in purchasing and selling unregistered common stock and understood they were gambling.

10. At all times material hereto, plaintiffs knew that from its beginning GTI had never made a profit and that its only source of income was from the sale of unregistered common stock.

11. At all times material hereto, plaintiffs knew that defendant Jack Solomon exaggerated when talking about GTI and when communicating with plaintiffs concerning their purchase of shares of unregistered stock of GTI.

12. At all times material hereto, plaintiffs did not believe much of what defendant Jack Solomon said about GTI and its prospects.

13. In early 1980, plaintiffs sold shares of GTI's common stock they had bought earlier and realized a profit of about $140,000.

14. In May of 1980, plaintiffs purchased 25,000 shares of GTI's unregistered common stock for $62,500. In June of 1980, over the objection of plaintiff Helen Lawrence, plaintiff Milton Lawrence, on behalf of both plaintiffs, purchased an additional 25,000 shares of GTI's unregistered common stock for $75,000.

15. Neither plaintiff relied in any way on what defendant Jack Solomn said or did not say in connection with their decision to purchase the shares of GTI's common stock in May and June of 1980.

16. A private investigation by the Securities and Exchange Commission ("SEC") was begun in April of 1980, but no defendant knew the scope of that investigation before July of 1980.

17. On July 2 of 1980, GTI issued a press release indicating the existence of the SEC investigation. An article reflecting the investigation appeared in the July 3, 1980, edition of the Wall Street Journal. Announcement of the existence of the SEC investigation made no impact on the price of GTI's publicly-traded shares.

18. Before July of 1980, GTI submitted an application to the Nevada Gaming Control Board for a license with respect to a casino it was building on the Colorado River in Laughlin, Nevada, and the Gaming Control Board commenced a routine investigation in connection with the licensing application.

19. No defendant learned before mid-July of 1980 that the Gaming Control Board investigation also was focusing on Mr. Solomon personally and upon the sale of unregistered shares of GTI's stock.

20. During July and August, the existence of the Gaming Control Board investigation was public knowledge but had no impact upon the price of GTI's publicly-traded shares.

21. Before August of 1980, no defendant had any knowledge that the Gaming Control Board would request or require that Mr. Solomon resign as an officer of GTI as a condition to granting the license application with respect to the Colorado Belle.

22. GTI's fiscal year ends on September 30, and its 10-K is required to be filed by December 31 of each year.

23. The 10-K for the fiscal year ended September 30, 1980, was not timely filed.

24. On March 24, 1981, the National Association of Security Dealers de-listed the shares of GTI's common stock from public trading in the over-the-counter market because of GTI's failure timely to file the 10-K due on or about December 31, 1980.

25. On March 30, 1981, the SEC suspended from trading for ten days the publicly-traded shares of GTI for the same reason that the shares had been de-listed.

26. At all times material hereto, plaintiffs knew that any shares they purchased that had not been registered would have to be held for not less than two years and then could be sold only after compliance with certain requirements of the SEC.

27. No defendant misrepresented any material fact to either plaintiff in connection with their purchase of shares of GTI in May and June of 1980.

28. No defendant omitted to state any material fact necessary to make what had been said not misleading in connection with plaintiffs' puchase of shares of GTI's common stock in May and June of 1980.

29. No defendant had sufficiently verified for disclosure purposes information concerning the SEC investigation and the Gaming Control Board investigation before July 1, 1980. Any information held by any defedant relating thereto was not ripe for disclosure before July 1, 1980.

30. In connection with the purchase by plaintiffs of the common stock of GTI in May and June of 1980, no defendant acted with the intent to deceive or defraud either plaintiff, and no defendant acted recklessly in connection with such purchases.

31. The court does not find credible Milton Lawrence's trial testimony that had he known of the SEC investigation he would not have purchased shares in May and June, 1980.

32. This lawsuit was commenced more than two years after plaintiffs knew or, in the exercise of reasonable diligence, should have known the existence of the SEC investigation.

33. Plaintiffs have suffered no damage as a result of the conduct of any defendant.

From the foregoing facts, the court makes the following conclusions of law.

CONCLUSIONS OF LAW

1. The court has jurisdiction under Title 28 U.S.C. § 1332.

2. None of the information or facts known by any defendant at the time of plaintiffs' purchases of GTI's common stock in May and June of 1980 was material for disclosure purposes or ripe for disclosure.

3. No defendant acted with the scienter required to impose liability under state or federal law in connection with plaintiffs' purchases of GTI's common stock in May and June of 1980.

4. No conduct of any defendant was the proximate or direct cause of any loss by plaintiffs, or either of them.

5. There was no reliance by either plaintiff upon what any defendant said or did not say in connection with plaintiffs' purchase of shares of GTI in May and June of 1980.

6. No defendant is liable to either plaintiff under state or federal law.

7. Judgment shall be for the defendants, and the defendants shall recover their costs.

DATED: September 5, 1984.

s/s Roger D. Foley
DISTRICT JUDGE